IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17070 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SWASTIK KHANDSARI UDYOG THROUGH PARTNER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17070 of 2004

MR ANSHIN H DESAI for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 30/12/2004

ORAL JUDGEMENT

1. The petitioner has preferred this petition challenging the order dated 2.7.1999 passed by the

District Collector and its confirmation thereof by the State Government as per the order dated 2.7.2004, whereby the land allotted to the original grantee is ordered to be forfeited.

2. Heard Mr.Desai, learned Counsel for the petitioner. Mr.Desai firstly raised the contention that there is no material produced on record to show that it is a new tenure land and he further submitted that if there is no material produced to show that the land allotted was a new tenure land, the Authority could not have proceeded on the basis that it is a new tenure land. In support he relied upon the decision of this Court in the case of "Kalumiya Dalumiya vs. State of Gujarat", reported in 2001(1) GLH (U.J.), 5. In my view, the said contention is ill-founded in as much as in the order dated 2.7.1996, whereby land was allotted to the original grantee, it has been expressly stated that the land has been allotted as new and undivided tenure (restricted tenure) and, therefore, the same itself is sufficient material to show that the land allotted was as a new tenure land. It is also pertinent to note that originally the land in question was goucher land and it had vested to the Gram Panchayat. The same has been resumed back by the State Government and has been allotted to the grantee as new tenure land and, therefore, the decision in case of "Kalumiya Dalumiya" (supra), in my view, cannot be made applicable to the present case and more particularly, when there was material to show that the land was allotted as new tenure land. Mr.Desai, learned Counsel for the petitioner made an attempt to submit that the interpretation of the conditions go to show that it is a new tenure land. The same also cannot be accepted for the simple reason that the various conditions mentioned therein authorise the Government to forfeit the land in case of breach of any of the conditions and, therefore, when the allotment itself is of a new tenure land and of restricted tenure land and the conditions authorise the Government to resume back the land and to forfeit the land, it cannot be accepted that the land was old tenure land.

3. Mr.Desai also raised the contention that as per Conditions No.4 and 5, it cannot be said that in a matter of transfer of the land or factory, the permission was required to be obtained. He also submitted that the interpretation of Condition No.8 made by the Authority is not correct and the same does not require obtaining of the permission from the Government. He submitted that the petitioner had shown willingness to pay the unearned profit of 50% but as initially the direction was to

recover 75% of the unearned profit and 40 times penalty of revenue assessment, the payment is not made. He submitted that as such as the order was passed by the District Collector to deposit 75% unearned profit and penalty of 40 times revenue assessment, the State Government had remanded the matter. He submitted that after the remand the Collector has misinterpreted the conditions and has passed the impugned order. He also relied upon the decision of this Court in case of "Rajkot District Co-operative Purchase & Sales Union Ltd. v. State of Gujarat & Anr.", reported in 1999(2) GLR, 1717 to contend that the decision of the Collector to direct for deposit of 150% unearned profit cannot be sustained on the face of the condition and he also submitted that even if this Court finds that the petitioner was required to deposit 100% unearned profit, this Court may interfere and may put the petitioner to such terms and conditions and, therefore, he submitted that the order passed by the Collector as well as by the State Government deserve interference.

4. The interpretation as sought to be canvassed by Mr.Desai of various conditions which are appended to the order of allotment is not correct. The perusal of the Condition No.4 shows that the land cannot be divided into two parts and without prior permission of the State Government, neither division can be made, nor any part can be sold. The Condition No.5 provides that in the event of direct sale or in the event of transfer on account of non-release of mortgage, the State Government will have right to receive 50% of unearned profit and if the land is to be used for any purpose other than original industrial purpose, the prior permission of the State Government would be required. The Condition No.6 provides that at any time the State Government finds that any information is suppressed in respect to the transaction of sale or its consideration, the State Government can declare such sale as null and void. The Condition No.7 provides that no use of the land shall be permitted other than the purpose for which it has been granted, without prior permission of the State Government. Condition No.8 provides that the land has been granted on condition that no encumbrance shall be created over the land or any part thereof by the managers or authorised representative or officers of the managers or the legal heirs. On conjoint reading of the aforesaid conditions, it appears that in a matter where any right is to be created over the land, may be by sale, transfer, or by creating encumbrance or mortgage, prior permission would be required. Even for division or disposal of any part of the land prior permission is required. The

transaction of sale is entered into without prior permission of the State Government and, therefore, there is breach of condition by the grantee for sale of the land. The interpretation as sought to be canvassed by Mr.Desai of various conditions that it does not require permission of the State Government is ill-founded and cannot be accepted. The perusal of the order passed by the Collector dated 2.7.1999 which is impugned in this petition shows that the insistence was made by the petitioner to deposit 50% of the unearned profit, though the land was allotted as new tenure land and since the transaction was entered into without permission, 100% unearned profit was required to be deposited. Even in the decision of this Court in case of "Rajkot District Co-operative Purchase & Sales Union Ltd. v. State of Gujarat & Anr."(supra), upon which the reliance is placed by Mr.Desai, at para 7 it has been observed as under:

"7. This contention of the learned counsel for the petitioner does not appear to be well founded. The very document on which reliance has been placed by learned counsel for the petitioner goes to show that under clause 5, it has been stipulated that if the allottee transfers the entire land along with his business as a going concern or he is forced to transfer the land because of his inability to redeem the mortgage, he has to surrender 75% of unearned profit to the State Government. Like consequences follows if the allottee makes the use of such land for any purpose other than the original industrial purpose for which it has been granted. For the purposes of this clause even change in the constitution of the firm has been deemed to be a transfer of land. On this premise, the petitioner's case is that he has transferred the land, he is liable to pay 75% of the unearned profit which he has paid. However, he is unable to say why clause 8 is not applicable. About applicability of clause 8, his submission is that clause 8 also envisages surrender of 75% of unearned profit in case transfer is made without prior permission of the Collector. This is obvious misreading of clause 8. Clause 8 clearly stipulates that if transfer of land take place without permission of the Collector in any manner, then, the Collector is entitled to recover unearned profit in respect of that transfer. Clause 8 is not inhibited by any reduction in the quantum of unearned profit accrued to the allottee as a result of allotment

> at concessional rate and the higher price recovered on such transfer. The determination of unearned profit has also been left within the jurisdiction of Collector. This clearly goes to show that in case transfer is without prior permission of the Collector, the allottee has to surrender full amount of unearned profit accrued to him as a result of such transfer, as determined by the Collector. Thus, in my opinion, the contention that the petitioner is liable only to 75% of unearned profit can not be accepted and he is liable to surrender 100% unearned profit as determined by the Collector as breach of condition 8 of the allotment is not in dispute. As noticed above, there is no dispute that as per final determination, the unearned profit which was computed by the Collector on transfer of the land came to be Rs.15,90,400/-. Thus the liability of the petitioner as a result of unauthorised transfer cannot be less than 15,90,400/-."

5. Therefore, the district Collector was right in concluding that there is breach of condition and, therefore, the land can be resumed back without any compensation, even if lenient view is taken qua condition to complete construction.

6. The contention raised by Mr.Desai that the petitioner is now ready to deposit 100% of the unearned profit cannot be accepted because the transaction is entered into without prior permission as back as in the year 1980 and after a period of about 20 years. when the order of forfeiture is passed such offer is made by the petitioner to deposit 100% of unearned profit and, therefore, the same cannot be accepted and indulgence cannot be shown by the Court. That apart, when it was expressly provided in the condition for allotment, the transaction could not have been entered into without prior permission. If the authority has exercised power of forfeiture of the land on account of open defiance of the condition of allotment in a matter where the transaction related to a business deal and if this Court shows the indulgence, in my view, it would result into encouraging the citizen to commit breach of the condition and, therefore also, such offer made by Mr.Desai at this stage cannot be accepted. In the decision of "Rajkot District Co-operative Purchase & Sales Union Ltd. v. State of Gujarat & Anr." (supra), view taken by the Court is that after the transaction, the licence was transferred on condition to deposit 75% of unearned

profit and the said amount of 75% was already paid. When it was sought to be raised upto 150% the Court took the view that it could be made upto 100%. In the present case the petitioner has not paid a single rupee towards unearned profit and further in the impugned order passed by the Collector when 100% unearned profit was proposed to be recovered, the insistence was made by the petitioner for 50% and, therefore, the said decision is of no help to the petitioner for contending that only 50% of the unearned profit can be recovered and not 100%.

7. Mr.Desai further submitted that no reasons are assigned by the District Collector or by the State Government exercising quasi-judicial power and for supporting his contention that reasons are required to be recorded, Mr.Desai relied upon the decision of this Court in case of "Ambalal Somabhai Parmar & Ors. v. State of Gujarat & Anr.", reported in 2004(3) GLR, 2397. There cannot be any dispute to the proposition that the reasons are required to be recorded by the quasi-judicial authority. The major purpose of recording of the reasons to intimate to the parties and also to enable the higher forum to examine the legality and validity of the order. It is not necessary that all the contentions which may be raised, relevant or irrelevant, are required to be dealt with by quasi-judicial authority while recording the reasons. The reasons which weigh to the authority are required to be recorded. If the matter is examined accordingly the impugned orders passed by the Collector shows that the reasons are recorded for concluding the breach of condition and for resumption of the land in question. Even before the State Government the reasons are recorded that the land was allotted as new tenure land and without prior permission the sale transaction has taken place and there is breach of condition No.8 read with condition No.12 and, therefore, it is found by the State Government that no interference is called for and, therefore, no interference is made by the State Government. Therefore, it cannot be said that impugned orders are passed by the Collector and State Government without recording the reasons.

8. Mr.Desai lastly also raised contention that the action is initiated after unreasonable delay and, in his submission, the intimation for transaction of sale was given in the year 1981 and the proceedings were initiated in the year 1989. Whether the delay should operate as a bar to the authority in exercising the power would depend on the facts of each case. In the present case, when not the permission is not obtained, though it was required to be obtained, the transaction can be said as without

authority and no material is produced on record to contend that on account of delay the position is changed as sought to be canvassed. If the transaction is barred or prohibited as per the terms of the allotment, considering the facts and circumstances, I find that it cannot be said that the ground of delay would disentitle the authority from exercising the power.

9. In view of the above, no case is made out for interference and, therefore, rejected.

30.12.2004 (Jayant Patel, J.)

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